APPELLATE CIVIL.

Before Mr. Justice Norris and Mr. Justice Macpherson.

RAM NARAIN SINGH AND OTHERS (DEFENDANTS) *v.* RAM RUNJUN CHUCKERBUTTY (PLAINTIFF).*

1886 *June* 24.

Sonthal Pergunnahs Settlement—Regulation III of 1872, *ss.* 24, 25—*Suit to set aside order of Settlement Officer—Non-publication of record of rights.*

Where, in December 1884, a suit was brought to set aside an order of the Settlement Officer under Regulation III of 1872, made in December 1875, after disposing of the plaintiff's objections to the defendants' title, and it was found that no record of rights had been published in accordance with s. 24 of the Regulation : *Held*, the suit was not barred under s. 25 as not having been brought within three years from the date of the order. The final order referred to in that section must be one subsequent to or not preceding the publication of the record of rights.

THIS suit was brought for the reversal of an order of the Settlement Officer, dated 16th December 1875, by which the rights of the first defendant as *mokurariдar*, and of the other defendants as *dur-mokurariдars* of certain mouzahs, were recognized, and for possession of the said mouzahs. The plaintiff alleged that he was in possession of the said mouzahs as zemindar, and that they had been sub-let by him in *ijara* which expired in 1284 (1877); that the settlement proceedings commenced in these mouzahs in 1875, whilst they were so sub-let; that before the Settlement Officer, the defendants falsely represented that they held these mouzahs on *mokurari* and *dur-mokurari* titles, and that the Settlement Officer, notwithstanding an objection filed by the plaintiff, recorded his order to the above effect under Regulation III of 1872. No record of rights, however, as provided by the Regulation, was ever published. The plaintiff denied that the defendants had any such title as had been recognized by the Settlement Officer, and alleged that in 1289 (1883) he demanded possession of the mouzahs from the defendants

* Appeals from Appellate Orders Nos. 110 and 117 of 1886, against the orders of L. R. Forbes, Esq., Deputy Commissioner of Sonthal Pergunnahs, dated the 2nd of January 1886, reversing the orders of J. A. Craven, Esq., Sub-Divisional Officer of Jamtara, dated the 13th of August 1885.

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from the beginning of 1290 (1884), which they refused to give him, and he dated his cause of action from the latter date. The suit was instituted on 20th December 1884. The only defence material to this report was that the suit was barred by limitation under s. 25 of Regulation III of 1872, inasmuch as it had not been brought within three years from the date of the order of the Settlement Officer.

The suit was dismissed on this ground by the first Court; but on appeal that decision was reversed by the Deputy Commissioner, who remanded the case for trial on the merits.

From this decision the defendants appealed to the High Court.

Dr. *Rash Behari Ghose* and Baboo *Jogesh Chunder Day* for the appellants.

Baboo *Karuna Sindhu Mukherjee* for the respondent.

For the appellants it was contended that it was not necessary that the publication of a record of rights should be made before a final order could be made by the Settlement Officer. A final order might be made at any stage; and, as in this case, the order had been made disposing of the plaintiff's objection, and the order had not been appealed from, it was a final order under s. 25 of the Regulation, though made before the publication of the record of rights, and the suit should have been brought within three years from that order.

For the respondent it was contended that the final order referred to in s. 25 applied only to final orders disposing of objections taken to an entry in the record of rights after its due publication under s. 24. Here the objection filed by the plaintiffs was one made under ss. 12 and 14, and not under s. 24, and the order made on it was not a final order; there was consequently no order from which the three years' limitation could commence.

The judgment of the Court (NORRIS and MACPHERSON, JJ.) was as follows:—

It is contended that the lower Appellate Court has put a wrong construction upon that portion of s. 25 of Regulation III of 1872 which enacts that the Civil Courts in the Sonthal

Pergunnahs can entertain a suit brought to "contest the finding or record of the Settlement Officer within three years from the date of the said publication or of the final order of the Revenue Court." The publication referred to is that of the record of rights, which under s. 24 requires to be notified, and published by posting a copy thereof in some conspicuous place in the village, otherwise in such manner as may be convenient. The second clause of that section gives a right to any person interested to bring forward in the Original or Appellate Settlement Courts any objection he may desire to make to any part of such record.

In the present case it is admitted that the Settlement Officer in the course of a settlement held that the defendants were *mokuraridars* of certain villages. But it is admitted also that no record of rights was ever published under s. 24. And the question which now arises is, whether the suit brought to contest that finding is within time under s. 25. We think the construction which the lower Court has put upon that section is the right one. We are practically asked to read for the words Revenue Court in s. 25 the words "Settlement Officer." We see no grounds on which any such construction can be maintained. The words in the section seem to indicate that a suit is within time if brought within three years from the date of the publication, or if there is any subsequent order of the Revenue Court, from such date. Sections 24 and 25 read together show that it is open to any one to question the correctness of the conclusion arrived at by the Settlement Officer, subsequent to the publication of the record of rights. And when we find in the limitation clause that a suit may be brought either from the date of the said publication or from the final order of the Revenue Court, it seems to us that the order of the Revenue Court must be one which follows and does not precede the publication of the record of rights.

We think, therefore, that the view of the lower Appellate Court is right, and that the appeal must be dismissed with costs.

This decision governs the appeal No. 117 of 1886.

J. V. W. *Appeal dismissed.*